

**From:** Miller, Elizabeth  
**Sent:** Wednesday, March 19, 2014 11:49 AM  
**To:** Mears, David  
**CC:** Markowitz, Deb; Allen, Susan; Porter, Louis; Searles, Brian; Minter, Sue; Ross, Chuck; Leriche, Lucy; Miller, Lawrence  
**Subject:** RE: Draft briefing materials for Lake Champlain TMDL meeting  
**Attachments:** 2014-03-18 Briefing Memo re Lake Champlain TMDL - Liz.docx

Thanks for the email and materials. Here are some comments and very brief suggestions. I hope they are helpful. The only other comment that occurred to me, but that I did not include in the redline is: Should we prepare any VT specific facts for this – I'm assuming the Administrator realizes our population base and size but to me the starkest way to articulate the challenge we face is to note the size of the watershed and pollution problem versus the population/taxpayer size of the state, coupled with the size of our towns/cities and relative lack of commerce. Just a framing for the challenge. Maybe unnecessary but that piece is lacking and may be helpful, either directly written into the memo or as TPs for the Gov or you orally.

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**From:** Mears, David  
**Sent:** Wednesday, March 19, 2014 1:13 AM  
**To:** Miller, Elizabeth  
**Cc:** Markowitz, Deb; Allen, Susan; Porter, Louis; Searles, Brian; Minter, Sue; Ross, Chuck; Leriche, Lucy; Miller, Lawrence  
**Subject:** Draft briefing materials for Lake Champlain TMDL meeting

Liz: Given that time is short, I am leaping all levels to share a draft briefing memo to you that could also serve as the basis for a briefing document we share with Governor Shumlin, and also as a document that we could share with Administrator McCarthy and her staff in advance of the meeting next Tuesday.

You indicated a willingness to share advice on how best to present this information so I am taking you up on that offer. The topics in this memo reflect a conversation I had this afternoon with Adrienne Wojciechowski and Tom Berry. Can you let me know if this document (a) hits the right topics, (b) includes ideas that we do not want to put forward, and (c) is too detailed or not detailed enough? I can revise accordingly.

I also welcome comments from everyone else cc'd on this message.

As an aside, I am still working with my staff on a separate set of materials that describe the overall funding needs for use in our briefing with the Governor this Friday, as well as a summary of the draft Phase I implementation plan. The most

recent draft of this now 150 page document landed on my desk this morning. David

**Memorandum**

To: Elizabeth Miller, Chief of Staff to Governor Shumlin

From: David Mears, Commissioner  
Vermont Department of Environmental Conservation (DEC)

Cc: Secretaries of Natural Resources, Agriculture, Transportation and Commerce (Markowitz, Ross, Searles and Miller respectively)

Re: Governor Shumlin Discussion With EPA Administrator McCarthy Regarding Lake Champlain TMDL

Date: March XX, 2014

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Background: These materials have been compiled in preparation for Governor Shumlin's meeting with U.S. Environmental Protection Agency Administrator McCarthy and Senator Leahy scheduled for Tuesday, March 25 at 3:00 pm in Senator Leahy's office.

As you recently described in a message to Senator Leahy's staff, our goals for this meeting are to share the Governor's perspective on the Lake Champlain TMDL with a focus on three related issues: (a) the timeline of the state's commitments; (b) the need for a strategy that prioritizes efforts on the most significant pollution sources; and (c) the funding needs associated with implementation.

Our key message is that we are committed to pursuing a collaborative approach in order to make the best use of limited state and federal funds and to maximize outcomes for the lake. We want to ensure that the Administrator understands that we have unique challenges associated with a rural watershed in which the predominant sources of pollution are diffuse and widespread across activities on the landscape.

Attendees:

For Vermont: Governor Shumlin, Chief of Staff Liz Miller and DEC Commissioner David Mears

For EPA: EPA Administrator McCarthy, ?

For Sen. Leahy: Adrienne Wojciechowski, Tom Berry?

Agenda:

- I. TMDL implementation schedule [and EPA expectations regarding State commitments](#)
- II. Wastewater treatment plant phosphorus load allocations
- III. ~~Funding needs and strategies~~ [State Strategies for TMDL compliance and funding needs](#)
- IV. State request of EPA: [regulatory and budgetary](#)

Discussion of Issues:

- I. **TMDL Implementation Schedule:** The state's primary issue in this topic relates to the final compliance deadline. EPA Region One has indicated that itthey would like to see a 15 year implementation timeline with interim goals set forth in two year increments. DEC is proposing a 20 year timeline and would prefer five year increments. The final deadline is the most critical date for discussion because the ability of local governments and the state to achieve the necessary reduction turns on our ability to plan, prioritize and spread costs over time. The request for five year increments is to reflect the fact that our Clean Water Act permitting schedule operates on five year increments as does our Tactical Basin Plan renewal schedule.
- II. **Wastewater Treatment Plants:** DEC is proposing to build compliance schedules into permit renewals for all plants in the Lake Champlain basin. For plants where there is no meaningful impact on phosphorus reductions, we recommend no adjustment to their current permitted loads. For plants where reducing phosphorus will measurably reduce loads into the lake, we propose to required additional phosphorus controls but to include compliance schedules that may extend as long as 20 years, or longer if an EPA-approved integrated permitting approach is used. This will allow funds that would otherwise go to wastewater treatment plant upgrades to be prioritized for stormwater control. This is justified given the small percentage of phosphorus load (~3%) associated with wastewater treatment plants in the watershed. It is also justified by the substantial programmatic changes Vermont is pursuing, highlights of which are described below.
  - A. Transportation<sup>[e1]</sup>: DEC is proposing to undertake two major new programs: (1) A "TS4" permit for state roads modeled on the Municipal Separate Storm Sewer System Permit ("MS4") under which the entire state road network will be regulated under a general permit that allows our state transportation agency to operate under one stormwater permit; and (2) A Municipal Roads Stormwater General Permit requiring the development and implementation of stormwater management plans for local roads. We are evaluating options for increasing state transportation funds, and are building a strong local roads technical assistance program with the Vermont Agency of Transportation.
  - B. Farms: DEC is proposing to (1) Increase inspections and compliance efforts for all farms with a focus on small farms which have been largely unregulated in the past; (2) Implement a livestock exclusion program through regulation and incentives; (3) Update regulations governing farm stormwater control practices; and (4) Update requirements for and increase investment in nutrient management planning.
  - C. Stormwater: DEC is proposing a new general permit for existing developed lands including a first stage in which sites with greater than 3 acres of impervious cover will be required to obtain permit coverage, and a second stage in which municipal stormwater systems where high density (greater than 7%) impervious cover exceeds 15 acres. The permit will require stormwater management and phosphorus control plans. We are

also implementing an Executive Order promoting the use of green stormwater infrastructure.

- D. River Stability: DEC is establishing a “no adverse impact<sup>[e2]</sup>” standard for state land use permits (Act 250), development exempt from municipal regulation, and state development in floodplains. DEC is also promoting adoption of this standard by local governments participating in the National Flood Insurance Program.

### III. Funding

- A. Lake Champlain Basin Program: The budget for this program has declined in recent years substantially. This program is supported by both New York and Vermont and brings together all of the key governmental partners involved in the health of the lake<sup>[e3]</sup>. The State urges EPA ~~to should~~ request a substantial increase in the funding for this program.
- B. Other EPA Funds: Both the Clean Water Act Section 319 funds used to control non-point source pollution, and the Clean Water State Revolving Fund monies have declined in recent EPA budgets<sup>[e4]</sup>. EPA should request a substantial increase in the levels of funding for both programs with prioritization for enhanced funding to states that have nutrient impaired waters with associated TMDL obligations covering non-point source dominated watersheds with only a small point source contribution. EPA could also tie enhanced levels of funding to states that implement programs to promote green stormwater infrastructure.
- C. Other Sources of Federal Funds: EPA can play a critical role in bringing other federal agencies (USDA, FHWA, DOI, and ACOE) to the table to help develop a package of federal funding lines that could be used to contribute to reducing pollution into Lake Champlain. In addition,
  - 1. This is the year that the transportation authorization legislation will be considered in Congress and would be a good year to promote-add provisions authorizing federal highway funds for use by states to add stormwater management controls to projects.
  - 2. President Obama recently announced a major new funding initiative to address climate resilience. Vermont is a leader in its efforts to reduce flood damage from streambank erosion, a program that has substantial long-term water quality benefits. We have several programmatic and project ideas, largely centered on helping communities make better land use decisions, that could increase water quality and flood resilience.
- D. Joint Announcement: Would the Governor, Administrator and Senator be willing to make a joint announcement at the appropriate time publicly demonstrating their shared commitment to seeking the resources to restore Lake Champlain<sup>[e5]</sup>?

### IV. Requests of EPA Administrator McCarthy<sup>[e6]</sup>

- A. Support for a 20 year TMDL implementation deadline with five year milestones;
- B. Support for compliance schedules in wastewater treatment plant permits for phosphorus reduction extended as long as 20 years depending on the plant;
- C. Support for seeking additional federal funding for implementation of the TMDL:
  - a. Request additional funds for the Lake Champlain Basin Program in the next EPA budget;
  - b. Request increases in Clean Water Act Section 319 and State Revolving Fund dollars for stormwater targeted to states that are the subject of major nutrient TMDLs;
  - c. Convene federal partners (USDA, FHWA, DOI, ACOE) for the purpose of developing a package of other federal funding lines for Lake Champlain to be included in the Administration's budget request;
    - i. Participate in the discussions around the Transportation Authorization bill with the goal of finding ways to increase transportation dollars eligible for clean water efforts;
    - ii. Assist Vermont in its efforts to qualify for funding under the President's climate resilience initiative for the state's efforts to better manage and protect river corridors and floodplains.
  - d. Join Governor Shumlin and Senator Leahy in Vermont to announce a shared state and federal commitment to reducing pollution into Lake Champlain including a commitment to seek additional federal funds.